



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0369]

Hours of Service of Drivers: Republic Services; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Republic Services requesting an exemption from the requirement that drivers of commercial motor vehicles (CMVs) qualifying for the “short-haul” exception must return to the original work reporting location and be released within 12 hours of coming on duty. Republic Services asks that its short-haul CMV drivers be permitted to return within 14 hours without losing their short-haul status. Furthermore, Republic Services requests relief from the current electronic logging device (ELD) regulations for its affiliated companies. FMCSA requests public comment on the Republic Services application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0369 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number of this notice. DOT posts all comments received without change to www.regulations.gov, including personal information in a comment. Please see the Privacy Act heading below.

Docket: To read background documents or comments, go to www.regulations.gov or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS) at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366-2722; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0369), the specific section of this document to which the comment applies, and provide reasons for suggestions or recommendations. You may submit online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in your document so the Agency can contact you if it has questions about your submission.

To submit your comments online, go to www.regulations.gov and put the docket number, “FMCSA-2018-0369” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Submit a Formal Comment” button and type your comment into the text box in the following screen. Indicate whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or deny this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish

a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Drivers qualifying for the hours-of-service (HOS) short-haul exception in 49 CFR 395.1(e)(1) do not have to maintain a record of duty status (RODS) on board the vehicle provided that (among other things) they return to their normal work reporting location and are released from work within 12 hours after coming on duty. A driver who exceeds the 12-hour limit loses the short-haul exception and must prepare RODS immediately for the entire day, often by means of an electronic logging device (ELD)(49 CFR 395.8(a)(1)(i)).

Republic Services seeks an exemption for approximately 16,000 CMVs and approximately 15,500 drivers. Republic Services is a leading provider of non-hazardous solid waste collection, transfer, disposal, recycling and other environmental services,

operating in more than 40 states and Puerto Rico. It is one of the largest such fleets in the country. Republic Services drivers qualify routinely for the short-haul exception in § 395.1(e)(1), however, occasionally they cannot complete their duty day within 12 hours. Republic Services therefore seeks an exemption to allow its drivers to continue to qualify for the short-haul exception up to the 14th hour after coming on duty. In conjunction with this request, Republic Services requests further relief from the electronic logging device (ELD) requirements for their affiliated companies, which they state in their application is reasonable and consistent with current exemptions FMCSA has granted.

Republic Services states that the 14-hour rule is appropriate to certain industries and operations, including sanitation/solid waste and recycling collection. According to the applicant, the HOS regulations recognize the reasonableness of a 14-hour, rather than a 12-hour, return/release period in appropriate transport industries and other operations. Section 395.1(e)(1)(ii)(B) in the Federal regulations codifies the statutory 14-hour short-haul period for ready-mixed concrete drivers, and other subparts of the rules provide industry-specific HOS exemptions for certain operations, including oilfield operations and pipeline welding trucks. Republic Services' CMV drivers on solid waste and recycling routes generally meet the current short-haul exemption requirements and utilize the exception to written records of duty status (RODS). Exceptions to this that can occur are usually by no fault of the driver. Increasing the requirement to 14 hours will ensure that Republic Services' CMV drivers will meet the requirements of the short-haul operations exception in nearly all cases.

Regarding the other portion of its application for exemption, Republic Services indicates that ELDs were not designed for short-haul CMVs and that application of ELDs

to CMVs that operate within a 100-mile radius and make multiple stops represents an inefficient use of ELD technology. The devices may work well for long-haul trucking because these drivers operate the controls of their CMVs for extended periods of time without need to stop multiple times during a single shift. Unlike sanitation truck drivers, long-haul drivers are not away from the controls of their CMVs for significant periods of time during a shift. In contrast, Republic Services' solid waste and recycling collection drivers make numerous stops per shift and spend significant portions of their day performing a non-driving function. Its short-haul drivers have an average route distance of between 85 and 180 miles, much of which is generated when traveling to and from their service areas as opposed to servicing customers/collecting waste and recyclables from containers. On average, Republic's drivers spend approximately 30-50% of their on-duty time servicing customer containers as opposed to driving.

Republic Services further notes that on two prior occasions this year, FMCSA has recognized the reasonableness of extending the 14-hour return/release rule allowed the ready-mixed concrete industry to other industries. In January, the agency granted the application for exemption filed by the National Asphalt Paving Association, Inc. (NAPA), permitting CMV drivers transporting asphalt and related materials to return to the reporting location and be released within 14, instead of 12 hours [83 FR 3864]. In October, FMCSA granted Waste Management's (WM) similar request, recognizing the extension of the 14-hour rule to the solid waste/recycling drivers of a sanitation industry participant like Republic Services [83 FR 53940].

IV. Equivalent Level of Safety

To ensure an equivalent level of safety, Republic Services offers extensive formal classroom and field operations training. Its application references a company safety

program that concentrates on driver's attention and the most common risks associated with sanitation driver operations. Republic uses one-on-one in-cab observations in which its collection operations supervisors ride along with short-haul CMV drivers on their routes, providing real time coaching and feedback. According to Republic, these in-cab observations create positive relationships with the drivers where concerns such as hours, safety, and fatigue are addressed. Republic states that it covers increasing driver awareness about safety and fatigue and associated dangers and how to avoid and mitigate fatigue and remain alert behind the wheel. Republic Services utilizes event data recording devices to cover potential safety risks.

Republic Services requests a 5-year exemption. Republic Services' application for exemption, including a list of its 71 affiliated operating companies, is available for review in the docket for this notice.

Issued on: November 22, 2019.

Larry W. Minor,
Associate Administrator for Policy.

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